IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 30969 of 2007(S)

OA.529/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

DR.V.R.SANAL KUMAR,
S/O.V.N.RAGHAVA PANICKER, SCIENTIST/ENGINEER,
PROPULSION GROUP, VIKRAM SARABHAI SPACE CENTRE,
THIRUVANANTHAPURAM.
RESIDING AT: KUMAR SADANAM, KUMARAPURAM,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

BY ADV. DR.K.P.KYLASANATHA PILLAY
SMT.SREEDEVI KYLASANATH

RESPONDENTS:
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1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF SPACE,
BANGALORE.

2. CHAIRMAN,
INDIAN SPACE RESEARCH ORGANIZATION,
BANGALORE 94.

3. DIRECTOR,
VIKRAM SARABHAI SPACE CENTRE,
THIRUVANANTHAPURAM.

4. HEAD, HTR, VIKRAM SARABHAI SPACE CENTRE,
THIRUVANANTHAPURAM.

BY SRI.P.PARAMESWARAN NAIR, ASST.S.G.

BY ADV. SRI.DINESH RAO A.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 30969 OF 2007-S

Dated 7th November, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner was a Scientist/Engineer working under the respondents. Feeling aggrieved by Exts.P2 and P4 memos, by which his applications for sabbatical leave for pursuing studies abroad were rejected, the petitioner approached the Central Administrative Tribunal by filing O.A.No.529/2004. The said O.A was dismissed by Ext.P5 order dated 20.7.2007. Hence this writ petition challenging Ext.P5.

2. The petitioner was facing disciplinary proceedings for unauthorised absence, which were initiated by issuing charge-sheet dated 31.7.2003. While so, he submitted an application to join a University in South Korea, on the strength of the fellowship granted by the said University. The application for the said course was sent through proper channel and it was processed, recommended and forwarded by the Indian National Science Academy. When he was informed by Ext.P1

communication from the Academy that he has been awarded the Post Doctoral Fellowship for 2003 from 15.1.2004 to 14.1.2005, he submitted an application for leave to the competent authority of the I.S.R.O., under which he was working. The said application was rejected by Ext.P2 memo dated 9.3.2004. The petitioner, even before the issuance of Ext.P2, had already left for Korea to join the course. His application was rejected for the reason that "his services cannot be spared at this juncture". It was also noticed that he was facing disciplinary proceedings. The representation dated 19.5.2004 submitted by the petitioner to the Chairman, I.S.R.O., through proper channel, was not forwarded by the competent authority, as evident from Ext.P3. But, the Chairman took a decision on the advance copy received by him. The said representation dated 19.5.2004 was rejected by the Chairman, I.S.R.O., by Ext.P4 memo dated 14.6.2004. The Chairman held that there was no reason to deviate from the decision taken and communicated to him as per Ext.P2. He also noticed the progress of the disciplinary proceedings against the petitioner. The validity of those orders was considered by the C.A.T in Ext.P5. The Tribunal noticed that the petitioner left India to prosecute his studies without getting prior permission and also without getting the leave sanctioned. In view of the said facts and also the circumstance that the petitioner is already facing disciplinary proceedings

for unauthorised absence, the Tribunal upheld the decision of the competent authorities. The Tribunal considered all the contentions of the petitioner and found that in view of the aforementioned facts and circumstances the decision of the I.S.R.O cannot be interfered with.

3. The learned counsel for the petitioner Dr.K.P.Kylasanatha Pillay attacked Exts.P2 and P4, submitting that they are non-speaking orders and are vitiated by non-application of mind also. So, according to him, the Tribunal should have interfered with those orders.

4. The petitioner cannot claim leave as of right. It is a matter within the discretion of the employer. Of course, that discretion has to be exercised fairly and reasonably. In this case, the petitioner left India unauthorisedly without leave from the competent authority. Pending disciplinary proceedings for the same, he again left India, after submitting an application for leave, but leave was not sanctioned. If the competent authority, in the facts of the case, feels that the leave applied for by the petitioner cannot be granted, the same cannot be said to be illegal or perverse. Both the authorities have noticed the relevant fact that the petitioner has already left India without leave and he is facing disciplinary proceedings for his unauthorised absence. The orders need not be elaborate orders like a judgment. We are not inclined to accept the contention of the

learned counsel for the petitioner that the orders are not disclosing any grounds or they reveal non-application of mind. In the result, we find nothing illegal with the finding of the Central Administrative Tribunal in Ext.P5 about Exts.P2 and P4 orders, warranting interference under Article 226/227 of the Constitution of India. Accordingly, the writ petition fails and it is dismissed. But, it is made clear that this judgment will not affect the rights of the petitioner to pursue the challenge he has already made against Ext.P6 order before the C.A.T and also to pursue the reliefs sought in I.A.No.14668/2007.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/